

**UNDER** Schedule 1 of the Resource Management  
Act 1991 (the Act)

**IN THE MATTER OF** Proposed Change 1 to the Regional Policy  
Statement for the Wellington Region

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**JOINT WITNESS STATEMENT OF PLANNING EXPERTS**

**Indigenous Ecosystems Topic**

**Date of conference: 6 May 2024**

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## **INTRODUCTION**

- 1 This joint witness statement relates to expert conferencing of planning experts on the topic of Indigenous Ecosystems for Proposed Change 1 (**PC1**) to the Regional Policy Statement for the Wellington Region (**RPS**).
- 2 The expert conferencing was held on 6 May 2024 at the Regional Council's head office in Central Wellington and via remote videoconference.
- 3 Attendees at the conference were:
  - a) Pam Guest, s42A reporting officer for Greater Wellington Regional Council (**PG**)
  - b) Jerome Wyeth, s42A reporting officer for Greater Wellington Regional Council (**JW**)
  - c) Pauline Whitney, for Transpower (**PW**)
  - d) Claire Hunter, for Wellington International Airport Limited (**CH**)
  - e) Christine Foster, for Meridian Energy Limited (**CF**)
  - f) Murray Brass, for the Department of Conservation (**MB**).
- 4 Apologies were received from Catherine Heppelthwaite for Waka Kotahi - NZ Transport Agency (**NZTA**).
- 5 The session was facilitated by Jason Jones, Principal Consultant with Resource Management Group.
- 6 Notes were taken by Josephine Knight-Maclean, Policy Advisor with Greater Wellington Regional Council.

## **CODE OF CONDUCT**

- 7 Although this is a Council hearing process, this joint statement has been prepared in accordance with section 9.5 of the Environment Court Code of Conduct for Expert Witnesses 2023.

## **ASSUMPTIONS, PURPOSE AND SCOPE OF CONFERENCING**

- 8 Limited to scope of evidence presented at Hearing Stream Six – Indigenous Ecosystems , held 20 – 22 February 2024.
- 9 The conferencing and this Joint Witness Statement are to provide:

- a) Drafting assistance to the Panel; and
- b) A clear indication of – matters that are not in contention, matters that are agreed during conferencing, and matters that remain in contention.

#### **INDEX OF TOPICS DISCUSSED**

- 10 Discussions between the experts addressed the following topics:
  - a) Preliminary in-principle discussions;
  - b) Topic 1 – Policy 24
  - c) Topic 2 – Policy 24A
  - d) Topic 3 – Policy 24B
  - e) Topic 4 – Policy 24C
  - f) Topic 5 – Policy 24D
  - g) Topic 6 – Policy 47
  - h) Topic 7 – Policy IE.2A.
- 11 All experts participated in the discussions on all topics summarised above.
- 12 Attached at **Appendix 1** is an annotated version of Policies 24, 24A, 24B, 24C, 24D and 47. Amendments to these provisions have either been fully agreed between the experts, or largely agreed with some exceptions as described in Topics 4-6 below.
- 13 At **Appendix 2** is a version of Policy IE.2A proposed by JW and PG, which is referred to in Topic 7 below but not agreed between the experts.

#### **PRELIMINARY IN-PRINCIPLE DISCUSSIONS**

- 14 Following introductions, JW provided a high-level summary of in-principle changes he and PG consider are appropriate following further consideration of evidence presented at the hearing. Those can be summarised as follows:
  - a) a greater level of nuance between the provisions relating to electricity transmission activities ('**ET**') and renewable energy generation activities ('**REG**'); and

b) further refinement of provisions applying to the coastal environment specifically, including achieving closer alignment with related provisions in the Wellington Natural Resources Plan ('NRP').

15 There was general consensus among the experts that the above principles were helpful starting points to frame the discussions on individual policies; however, some participants held reservations as to the scope for making certain changes as to natural justice issues that may be arising for submitters who have not been afforded an opportunity to fairly consider the implications of making major substantive changes at this juncture.

16 PW, in particular, noted her overall concern about the scale of the changes introduced through the S42A evidence and rebuttal evidence specifically in relation to ET. She stressed that a number of parties have not had the ability to participate at the caucusing or on the provisions. Specific to ET, PW is also conscious that any further changes to the National Policy Statement for Electricity Transmission (**NPS-ET**) will need to be given effect to. She noted that in some cases there may be scope from submissions for some of the changes, but that the bigger issue for her is the scale of the changes and elements of natural justice.

17 While PG and JW acknowledged concerns that the scale of proposed amendments raises issues of scope and natural justice, they noted that they all directly align with either national direction or policy drafting already agreed in the NRP.

18 The experts agreed to consider scope and natural justice issues at appropriate intervals when discussing changes to the Change 1 provisions, and this is reflected in the topics below.

#### **TOPIC 1 – Policy 24**

##### ***Agreed matters***

19 All experts agree Policy 24 as amended in **Appendix 1** provides value in clarifying when and how policies 24A-24D apply; and provides important context in terms of meeting obligations under section 6(c) of the Resource Management Act 1991 (**RMA**). On that basis all experts support the retention of Policy 24 and enhancements to explanations in Policies 24A to 24C for consistency.

##### ***Matters remaining in contention***

20 No matters remain in contention between the experts in relation to Policy 24.

## TOPIC 2 – Policy 24A

### *Agreed matters*

- 21 The experts agreed several amendments to Policy 24A and attendant provisions in Change 1 as summarised below.

#### *Clarifying the relationship between Policy 24A and Policy 24D*

- 22 CF sought clarification of whether Policy 24A is intended to be applicable where Policy 24D applies. JW confirmed it is not intended that Policy 24A applies to REG in Policy 24D. JW clarified that REG need to have regard to the principles for offsetting and compensation in Appendices 1C and 1D. CF supported that approach.
- 23 CF confirmed also that she has recommended this approach (have regard to appendices 1C and 1D) and Meridian is comfortable with that approach.
- 24 All experts agree that it would be useful to include this clarification in the RPS to assist with plan interpretation. The following text should be added to the end of the explanation to Policy 24A: *Policy 24A does not apply to the REG and ET activities<sup>1</sup> which are subject to Policy 24D. Policy 24D(3) requires REG and ET activities to have regard to the principles for biodiversity offsetting and biodiversity compensation in Appendices 1C and 1D.*

#### *Potential amendments in response to NZTA submission*

- 25 The experts considered potential amendments to Policy 24A(d) and Appendix 1A as requested by NZTA. Ultimately it was decided that the matter would be addressed in the council reply evidence. CF, PW, CH have no view on the matter. MB considers that the outcome sought by NZTA is already achieved with the current drafting.

#### *Content of Appendix 1A*

- 26 CH noted that Appendix 1A as notified appears to include species that are not necessarily significant and therefore has concerns about the application of that appendix in the context of these policies. CH noted that a specific example of this is the ‘mixed kelp assemblages’, which according to ecologists (on behalf of WIAL) have advised that it is unclear as to what it means and whether it is significant in a coastal ecological context.

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<sup>1</sup> Note the application of Policy 24D to ET remains a matter of contention as discussed further below.

- 27 PG noted that Council experts have reviewed Appendix 1A and have agreed that ‘mixed kelp assemblages’ do not meet the New Zealand Coastal Policy Statement 2010 (NZCPS) Policy 11A criteria. PG proposed to delete the item ‘mixed kelp assemblages’ from Appendix 1A, and this will be reflected in the amended provisions of the councils reply. CH supported removal of mixed kelp assemblages; however, she considers this is an example of the breadth of Appendix 1A and the further errors that may arise with its application.
- 28 MB supported deletion of reference to ‘mixed kelp assemblages’ in Appendix 1A but continues to support retention of Appendix 1A overall.
- 29 CF and PW did not address this in evidence therefore proffered no view.

*Clarifying application within the Coastal Environment*

- 30 The experts note that the explanation to Policy 24A applies to the effects on indigenous biodiversity in the terrestrial and coastal environment. However, all experts agree it could be made clearer in the explanation to Policy 24C that Policy 24A applies in the coastal environment through the following statement “*Policy 24C is to be read with Policy 24A which also applies in the coastal environment*”. JW and PG clarified that the species and taxa captured by Policy 24C (1a) and (1b) include items listed in appendix 1A column 4.

***Matters remaining in contention***

- 31 The experts did not reach consensus on whether Appendix 1A should be retained. The relative positions for this are already clearly set out in evidence before the Panel.

**TOPIC 3 – Policy 24B**

***Agreed matters***

- 32 The experts agreed on multiple amendments to Policy 24B.

*Clarifying that Policy 24B does not apply to REG and ET activities*

- 33 JW suggested that to provide clarification the following sentence be provided at the end of the explanation to Policy 24B: “*Policy 24B does not apply to REG activities and ET activities*”. The amendment was supported by PW, CF, PG and MB. CH was neutral on the matter.

*Other minor changes for clarity & consistency of language*

34 JW recommended some minor corrections in sub-clauses 1-3 to better align with the NPS-IB. All experts agreed with JW's suggested minor amendments to Policy 24B as recorded in **Appendix 1**.

***Matters remaining in contention***

35 No matters remain in contention between the experts in relation to Policy 24B.

**TOPIC 4 – Policy 24C**

***Agreed matters***

36 The experts agree the NPSIB does not apply to ET or REG. However, RMA section 6(c) and the functions in section 30 and 31 still apply. All experts also note the NPSET, NZCPS and NPSREG also apply.

***Matters remaining in contention***

37 The experts were not able to reach consensus on the substance of Policy 24C.

*Policy 24C and implementation of national direction*

38 The experts agreed that the framing of Policy 24C(1) is appropriate, reflecting Policy 11(a) of the NZCPS. However, CF, CH, and PW considered Policy 24C(1) does not reconcile NZCPS Policy 6(a) or other NPS policy direction in relation to infrastructure, energy generation and transmission. CF noted that Policy 24C is a directing policy and there are other policies in the RPS that require consideration of other imperatives for example benefits of REG. The expectation is that when regional plan and district plan provisions are developed, they will be required to reconcile these potentially competing imperatives (their task will not be confined to Policy 24C) in giving effect to all relevant national policy directions. MB and PG considered that Policy 24C is still able to be reconciled with NZCPS Policy 6(a) and other national direction, and agree with CF that regional and district plans will be required to reconcile these.

39 JW and PG considered that, when read together, Policy 24A and new recommended Policy 24CC do reconcile NZCPS Policy 6(a) and other relevant higher order documents in relation

to regionally significant infrastructure in the coastal environment, aligning with the policy approach in the operative NRP (as detailed further in paragraph 45).

40 PW noted that Policy 24C, newly recommended Policy 24CC (Refer **Appendix 1**) and Policy 24D need to be better reconciled for ET due to the direction of the operative NPS-ET.

41 PW prefers that reference to ET be removed from Policy 24D (and 24C). Instead, PW seeks reliance on Policy 47 accepting this will be an interim approach subject to any changes to the NPS-ET. The reasons for this position are as follows:

- a) Clause 1.3 of the National Policy Statement for Indigenous Biodiversity 2023 (**NPS-IB**) is very clear in its directive that it does not apply to ET.
- b) The policies as drafted would apply to all ET activities, including maintenance, upgrades and new assets. This would have implications for the huge number of existing grid assets in the Wellington region. The provisions do not give effect to the operative NPS-ET. The option to amend Policy 24D to only apply to the development of new ET assets would not address the concerns with the relationship to Policy 24C or the wider lack of policy direction to give effect to the NPS-ET.
- c) Policies 24C and 24D as applied to ET have not been reconciled or provide the framework for a structured analysis. Policy 24C is very clear as an avoid policy for adverse effects on the identified values in clause (1). While there is a potential pathway in Policy 24D, this comes up against the avoid directive in Policy 24C.
- d) The operative NRP (Policy 14) provides a management framework specific to the National Grid and provides for a structured analysis.
- e) Policy 23 and Policy 47 of the RPS would continue to apply.

42 PW's recommended changes to Policy 47 are as outlined in evidence. Accepting that the RPS as a whole does not give effect to the operative NPS-ET and concerned with the lack of a broader policy framework in relation to ET, PW considers Transpower submission point on Policy 24 could be resolved by inserting the Transpower Policy 24 relief within Policy 47 and applying to new ET assets only.

43 JW would prefer that Policy 24C (and 24D) apply to ET activities; however he appreciates that this will cause issues due to the nature, complexity and scale of ET activities - particularly the operation, maintenance and upgrading of ET assets. There is also no scope



to give effect to the NPS-ET in full through Change 1. Therefore, JW would support the approach in the original Transpower submission (refer para 48 for wording) on Policy 24 but by way of a new clause in Policy 47 for ET activities, recognising that this is an interim policy framework until the NPSET is given effect to in full. However, JW has a different opinion on the most appropriate wording of that clause as set out in Policy 47 below. Based on the recommended clause above JW would support the exclusion of ET activities from Policy 24C and 24D. If agreed by the panel, this would need to be made clear in both policies.

- 44 MB and PG note para 36 above and that Change 1 has been developed prior to the NPS-IB in response to issues that also predate the NPS-IB. MB and PG consider that it is open to the Panel to include ET in Policy 24C (and 24D) and it would provide a more effective framework than relying on Policy 47 alone. MB and PG also note that some of the issues particular to ET are covered through reference to functional and operational need. MB and PG would support a different regime along the lines of Policy 47(l) for *existing* ET activities given that location has already been decided.

*Potential amendments to align with NRP provisions*

- 45 JW considered that the NRP already does an effective job of reconciling NZCPS Policy 11(b) with the need to provide for regionally significant infrastructure. He recommended that Policy 24C is amended and a new Policy 24CC is introduced to align with Policies P38 and P39 in the NRP. All experts supported these amendments because these issues have already been reconciled in the operative NRP for this Region, and therefore align in practice with the current policy framework for the coastal environment of Wellington region. All experts agreed that the changes JW proposes are generally appropriate against the above backdrop with two caveats:

- a) PW held residual concerns around application to ET and desire for these policies not to apply to ET.
- b) There is a question of scope and potential natural justices impacts through introducing this extent of change at this point in the process without opportunity for input from other potentially interested parties.

## **TOPIC 5 – Policy 24D**

### ***Agreed matters***

- 46 Consensus was reached in relation to the following aspects of Policy 24D:
- a) PG, CF, JW and MB agreed that the Policy should apply to REG. PW and CH are neutral in relation to REG.
  - b) PG, CF, JW and MB all agreed that Policy 24D should be drafted as recommended in rebuttal evidence by the council (subject to whatever the panel determines on exclusion of ET). PW and CH are neutral in relation to REG.

### ***Matters remaining in contention***

- 47 The experts disagreed on whether ET activities should be excluded from Policy 24D or not - namely:
- a) PW and JW supported the relief sought to exclude ET from Policy 24D for the reasons outlined in relation to Policy 24C.
  - b) CF and CH were neutral on the deletion of ET from Policy 24D.
  - c) MB and PG opposed the relief sought to exclude ET from Policy 24D for the reasons outlined in relation to Policy 24C.

## **TOPIC 6 – Policy 47**

### ***Agreed matters***

- 48 The experts agreed the following in relation to Policy 47:
- a) All experts agreed that the listed provisions in Policies 24A, 24B, 24C, 24CC and 24D should be matters that need to be given particular regard in the application of Policy 47. Reporting officers will consider this in their reply evidence.
  - b) JW and PG recommended that Clause (I) relating to established activities is amended to not apply to REG and ET activities. CF and PW agreed with that recommendation as the genesis of Clause (I) is from Clause 3.15 of the NPS-IB; and that Clause 1.3(3) prevails and means Clause 3.15 does not apply to REG and ET.

- c) All experts noted some interpretation issues with Clause (l) and all agreed that the words “provided that” should be replaced with “where”, to make it clear that this operates as an enabling policy not as a bar where activities do not meet the criteria. There was also an acknowledgement by the experts that the inclusion of “where” is consistent with Clause 3.15 of the NPS-IB where this provision has been derived from.
- d) All Experts agreed that Policy 47 Clause (g) should apply except where the more specific effects management provisions under clauses (i) and (j) apply. This can be achieved through the following words at the end of the clause, “except where Clause (i) and [new for ET] (j) apply”.

### ***Matters remaining in contention***

- 49 There was partial agreement in relation to the Transpower relief on Policy 24 being adapted to Policy 47. The wording proposed in the submission was as follows: *In the case of the National Grid, following a route, site and method selection process and having regard to the technical and operational constraints of the network, new development or major upgrades of the National Grid shall seek to avoid adverse effects, and otherwise remedy or mitigate adverse effects, on ecosystems or habitats with significant indigenous biodiversity values.*
- 50 As an interim policy framework JW supported the wording above as sought in Transpower’s original submission on Policy 24 applying to both new and major upgrades of ET. JW also recommended that the word “mitigate” is replaced with “minimised” to be more consistent with other RPS and NRP provisions and higher order documents.
- 51 MB and PG preferred that ET is addressed within the 24A, 24C and 24D suite of policies, but if the above provision is imported to Policy 47 considered that it should apply to both new and major upgrades of ET and be restructured to more clearly align with Policy 14 in the NRP.
- 52 PW would accept a new policy based on that provided in the Transpower submission. However, she would only support it being confined to ‘new’ ET activities on the basis of a lack of wider policy direction in the RPS to give effect to the NPS-ET. PW notes NRP Policy 14 is more nuanced and refers to ‘upgrade’ in context of indigenous biodiversity within context of NZCPS Policy 11(a) and (b). The use of the word mitigate reflects Policy 3 of the NPS-ET and therefore she preferred the use of the term “mitigate” over “minimise”. While PW would support a policy approach as provided in NRP Policy P14, PW maintained her

position that a future plan change may be the most appropriate way in which to give effect to the NPSET in context of IB.

53 CH and CF have no view on this aspect of Policy 47.

## TOPIC 7 – IE.2A

### *Agreed matters*

54 No consensus was reached in relation to Policy IE.2A.

### *Matters remaining in contention*

55 JW and PG tabled amended drafting for Policy IE.2A (refer Appendix 2).

56 CF, CH and PW considered the scope of Policy IE.2A raises significant potential difficulties for new and existing RSI that were not apparent in the publicly notified version of Change 1 and are best dealt with via a separate schedule 1 process.

57 JW and PG noted the concerns above, but considered that Policy IE.2A is appropriate to give effect to the NPS-IB and relief sought in submissions for a regulatory policy to implement new direction in RPS Objective 16A relating to the maintenance of biodiversity outside of non-significant biodiversity areas. JW and PG further noted that clause (b) and (c) directly implement Clause 3.16 in the NPS-IB and do not apply to ET and REG activities. However, they considered that is important to provide direction to manage effects of ET and REG outside significant biodiversity areas. They recognised the concerns that the direction to avoid, remedy or mitigate adverse effects to the extent practicable could be potentially overly onerous for ET activities in particular and would support amendments to Clause (a) to align with Policy 3 or 5 in the NPS-ET and to better recognise the benefits of these activities consistent with other RPS provisions. No specific wording was provided.

58 CH noted that the approach being taken in Policy IE.2A meant that regionally significant infrastructure (**RSI**) need to apply the same level of management regardless of whether the activity was affecting significant areas of biodiversity (i.e SNAs) or areas with little or no significance.

59 MB considered that Policy IE.2A needs to apply direction for REG and ET in order to meet council functions under sections 30 and 31. He supported the retention of “to the extent

practicable” in clause (a) but would also support an addition to recognise the functional and operational constraints and benefits of REG and ET especially for existing activities.

60 CF agreed with MB that the RPS should provide direction for management of effects on non-significant biodiversity, including for REG and other RSI. However, the wording proposed does not sufficiently account for the benefits of REG and RSI recognised in RPS Policy 39. Hence her reason for proposing that it would be better to explore those issues through a separate process.


#### **PARTIES TO JOINT WITNESS STATEMENT**

61 The signatories to this joint witness statement confirm that:

- a) They agree with the outcome of the expert conference as recorded in this statement;
- b) They have read section 9 – Code of Conduct for Expert witnesses – of the Environment Court’s Practice Note 2023 and agreed to comply with it;
- c) The matters addressed in this statement are within their area of expertise; and
- d) They have not omitted material facts known to them that might alter or detract from their opinions.

#### **SIGNED:**

<b>Name</b>	<b>Signature</b>
Murray Brass	
Christine Foster	
Pam Guest	

Claire Hunter	
Pauline Whitney	
Jerome Wyeth	

**DATE:**

**9 May 2024**